

REMARKS

Claims 1-21 are all the claims pending in the application. By this Amendment, Applicant amends claims 20 and 21 to further clarify the invention. Amendments to claims 20 and 21 are clearly supported throughout the specification *e.g.*, page 2 of the specification.

The Examiner withdrew the previous rejections. The Examiner, however, found new grounds for rejecting the claims. Specifically, claims 1-21 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,963,538 to Giroux et al. (hereinafter “Giroux”). Applicant respectfully traverses these grounds for rejection in view of the following comments.

Of the rejected claims, claims 1, 2, 10, and 15 are independent. This response, at least initially, focuses on the independent claim 1. Independent claim 1 is a unique combination of features not disclosed by the prior art reference cited by the Examiner. Claim 1 requires:

wherein only said data sink reports to said data source on said network status information of said communications network in a neighbourhood around the data sink, and wherein no intermediate network node reports to said data source on said network status information of said communication network...

The Examiner asserts that claim 1 is directed to a network status reporting method and is anticipated by Giroux. Specifically, the Examiner asserts that Giroux’s available bit rate (hereinafter “ABR”) flow control method discloses that only the data sink reports the network status information and that no intermediate network nodes report to the data source the status information of said communication network (*see* page 3 of the Office Action). Applicant respectfully disagrees.

In the background of the invention, the ABR method is discussed. Specifically, it is disclosed that in the ABR method the data sink and each of the intermediate nodes report to the data source on the congestion in the communications network. Specifically, the information is reported back to the data source from the data sink and the intermediate nodes in backward resource management cells (hereinafter “RM-cells”) (*see* page 1 of the specification). This technique, however is complex and cannot be used in a heterogeneous systems such as ATM and frame relay heterogeneous network (*see* page 2 of the specification). Accordingly, to reduce complexity and to avoid the ABR technique that does not work in certain networks, in the claimed invention, only the data sink reports to the data source network status information and none of the intermediate network nodes report to the data source communications network information.

Giroux’s disclosure is not different from the conventional technique described in the background of the invention. Specifically, Giroux relates to an ATM network using an ABR method to adjust the transmission rate in response to the information in the RM-cell, thereby preventing congestion and packet loss (Fig. 2; col. 2, lines 42 to 61 and col. 5, line 46 to col. 6, line 19). In Giroux, “each network element along the path within the ATM network monitors its local congestion and may mark the resource management [RM] cell with an indication of bandwidth availability through the element” (emphasis added; col. 5, lines 34 to 38). In short, Giroux is no different from the conventional technique, where each intermediate node may add to the backward RM-cell, information about its neighbourhood.

The Examiner alleges that col. 6, lines 8 to 11 of Giroux disclose having only the data sink report to the data source the network status information in its neighbourhood (*see* page 3 of the Office Action). Col. 6, lines 8 to 11 of Giroux recites:

[l]astly, at step S6, The RM cell of the ABR traffic is returned to the source end-system 11 in order to appropriately modify the send rate of traffic leaving the source end-system 11.

In this passage, however, there is no disclosure or suggestion that none of the intermediate nodes report to the data source. In fact, in Giroux's technique, each element of the network may add to the RM-cell status report on the conditions in its neighbourhood.

In sum, the rejection is improper as Giroux fails to disclose or suggest that "no intermediate network node reports to said data source on said network status information of said communication network." "[A]nticipation under § 102 can be found only when the reference discloses exactly what is claimed and that where there are differences between the reference disclosure and the claim, the rejection must be based on § 103 which takes differences into account." *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985); MPEP § 2131.

Therefore, "wherein only said data sink reports to said data source on said network status information of said communications network in a neighbourhood around the data sink, and wherein no intermediate network node reports to said data source on said network status information of said communication network" set forth in claim 1 is not disclosed by Giroux, which lacks having only the data sink report the network status information and having none of the intermediate network elements report the status network information. For at least these

exemplary reasons, independent claim 1 is patentably distinguishable from Giroux and it is appropriate and necessary for the Examiner thus to withdraw this rejection of independent claim 1.

Independent claims 2, 10, and 15 contain features that are similar to the features argued above with respect to claim 1, and those arguments are respectfully submitted to apply with equal force here. For at least analogous exemplary reasons, therefore, Applicant respectfully requests the Examiner to withdraw this rejection of independent claims 2, 10, and 15, and their dependent claims 3-9, 11-14, and 16-21.

In addition, dependent claim 20 recites: "wherein the second communication network is a frame relay network." Giroux discloses using RM-cells associated with an ABR technique of the ATM network. The ABR technique that includes RM-cells cannot work with a frame relay network such as the internet. For at least this additional exemplary reason, claim 20 is patentably distinguishable from Giroux.

Similarly, dependent claim 21 recites: "wherein at least one of the first communication network and the second communication network is not adapted to perform available bit rate control technique." Giroux discloses an ABR technique in which RM-cells are used. Giroux's technique will not work in a network that cannot use the ABR technique such as a frame relay network. For at least this additional exemplary reason, claim 21 patentably distinguishes from Giroux.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. Appln. No. 09/737,471
Attorney Docket No.: Q62150

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860


WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: May 8, 2006

Respectfully submitted,



Nataliya Dvorson
Registration No. 56,616

Attorney Docket No.: Q62150